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July 19, 2022

Hon. Thomas J. McAvoy
Senior U.S. District Court Judge
U.S. District Court
Northern District of New York

Re: Barzman v. SUNY Binghamton, *et al.*, No. 3:22-cv-367 (TJM/ML)

Dear Judge McAvoy:

I represent the Defendants in the above-entitled case, and I submit this short letter brief in Reply regarding Defendants' Motion to Dismiss.

In Defendants' opening brief, I argued that a right of action does not exist under Title IX for employees, such as Plaintiff, who are alleging gender discrimination in the terms and conditions of their employment. That assertion was good law when I wrote the opening brief and submitted it to my supervisor on May 31, 2022. However, by the time that I had filed my brief, after it was reviewed, the Second Circuit had issued its decision in *Vengalattore v. Cornell Univ.*, 2022 U.S. App. LEXIS 15174 (2d Cir. June 2, 2022). Thus, my assertion that Plaintiff could not bring a Title IX cause of action is no longer good law because the Second Circuit held otherwise on June 2, 2022.

Despite the fact that Plaintiff now has a potential cause of action under Title IX, the Defendants' arguments on the 3-year statute of limitations and the Plaintiff's failure to state a sufficient cause of action are still viable reasons why this Court should dismiss this Complaint. Because those issues were adequately covered in Defendants' opening brief, no further argument is necessary.

Thank you kindly for your consideration of this matter.

Respectfully yours,

s/ *Michael McCartin*

Michael G. McCartin
Assistant Attorney General | Special Counsel

cc: All counsel of record (via e-filing)